

**STATE OF VERMONT
PUBLIC SERVICE BOARD**

Docket No. 7970

Petition of Vermont Gas Systems, Inc., for)
a certificate of public good, pursuant to 30)
V.S.A. § 248, authorizing the construction)
of the “Addison 'Natural' Gas Project”)
consisting of approximately 43 miles of)
new “natural” gas transmission pipeline in)
Chittenden and Addison Counties,)
approximately 5 miles of new distribution)
mainlines in Addison County, together)
with three new gate stations in Williston,)
New Haven and Middlebury, Vermont)

**COMMENTS OF NATHAN PALMER ON SCHEDULE AND SCOPE OF INVESTIGATION
UNDER RULE 60(b) ON REMAND FROM THE VERMONT SUPREME COURT¹**

I, Nathan Palmer, *pro se*, submit these comments in response to the Board’s Order of January 16, 2015 stating the Board’s intent to seek remand from the Supreme Court and seeking comments from the parties on the scope of the investigation and the amount of time for any further investigations the Board might request. Here I provide my comments on the scope of the investigation, schedule, and discovery. However, since I have already addressed these issues to a great extent in my December 23rd motion and January 12th comments, (*but in contrast to those of other parties, my positions were not summarized in the Board’s order of January 16, 2015*), I request that my prior filings be considered part and parcel of this document.²

I. SCOPE OF INVESTIGATION

¹Comments herein are meant to address a situation wherein the case has been remanded from the Vermont Supreme Court following the Board’s request for remand.

²I hope that I am still actually an intervenor and that it was unintentional that for the second time in this docket, the Board ignored my submission.

In response to the Board’s question regarding the scope of the Rule 60(b) proceeding on remand, I would like to say again, (consistent with my prior submissions to the Board on December 23rd and January 12th), that the Board should ***not only*** consider “more broadly the criteria that may be affected by the second Cost Estimate Update to account for other changes that have occurred since the evidentiary hearings in September 2014”³ ***but also*** consider the other changes that have occurred since the September 2014 hearings and their independent effect on whether the Project meets the Section 248 criteria. I know this sounds like a distinction without a difference, but it’s not. The fact is that the second VGS Cost Estimate Update, disclosed in VGS’ December 19th letter to the Board and detailed in VGS’ January 15th quarterly update, is not the only new evidence that has come to light since the September 2014 hearing that, if it had been known before the issuance of the CPG back in December 2013, would have changed the Board’s decision. Several other material facts had already come to light before this latest cost increase bombshell (and these facts continue to evolve and get worse for the Project and the Project’s compliance with Section 248). Those changes should convince the Board that regardless of this cost overrun, the Project will not only *not* serve the public good but it could very well become an economic and environmental albatross for Vermont.

The Project has to meet all of the Section 248 criteria – not just economic benefit and reduction of greenhouse gases. Some of the other changes have to do with whether there is actually any demand for the Project at all. Before any discussion occurs about whether there is economic benefit, the Board assesses the fundamental need for the project. The changes happening in Canada could independently mitigate the cost-competitiveness of methane over oil and petroleum products according to Gaz Metro’s own annual report. That annual report was issued before oil prices went through the floor so we can assume with both happening at once, ***“natural” gas could potentially cost more than oil and petroleum in the next few years***. If the Board could set aside the Project cost increase for a moment, they might still come to the conclusion (or accept that even if the cost increase is justified and even if VGS finds someone

³Second Remand Order at p.7.

other than ratepayers to fund the extra cost) that the price of methane might *still be too high* to produce any demand for “natural” gas service beyond current customers. The same is true for the availability of CNG by truck for industrial and commercial clients. VGS really only proved in its case that four industrial clients wanted “natural” gas and that maybe those clients would choose piped methane over trucked methane if the latter were available. Well, now that those customers have had some experience getting CNG by truck, maybe they won’t see the point in trenching up Addison County but will prefer the flexibility of being able to buy trucked CNG from a variety of suppliers. And, maybe when they see how expensive Canadian methane could get with the changes in Canada’s pipeline infrastructure, capacity, and gas transportation costs, they’ll actually prefer to buy trucked CNG from New England providers who have better access to less costly methane supplies. Unless the Board reviews these changes individually, it won’t be clear whether there are solid reasons other than the price increase to rescind the CPG. Section 248 makes it clear that Project cost is not the only driver of each of the Section 248(b) criteria and the Board appears to have ignored my position in its January 16th Order and perhaps did not consider an even broader scope other than the two options outlined in the Order.

I plan to show the Board that in addition to VGS’ \$32 million increase in estimated capital costs, the following new developments are relevant in and of themselves to the Section 248 criteria and should therefore not only be considered in light of the second Estimated Cost Update but as independent factors that would have changed the Board’s findings, conclusions, and decision:

- TransCanada’s Energy East project proposal to the National Energy Board of Canada (NEBC) in October 2014 and the ongoing review of that proposal, which would significantly diminish capacity on the pipeline system, through which VGS transports its gas purchased to the Vermont border. The impact of this reduced capacity threatens both VGS’ gas supply and VGS’ transportation costs, *which are passed on to customers*.

- The NEBC's recent approval of TransCanada's 2015-2030 tolls and negotiated settlement between TransCanada Enbridge Gas Distribution, Inc., Union Gas Limited, and Gaz Metro Limited Partnership, which has implications for VGS' latest Integrated Resource Plan, as well as gas purchase, storage, and transport costs.
- The sharp decrease in retail oil and propane prices as a result of the recent significant drop in crude oil prices – a drop that is expected to persist.
- The recent successful launch of VGS' "gas island" with compressed "natural" gas delivered by truck to industrial and commercial customers in Middlebury, and VGS' announcement that it plans to expand the gas island concept to Rutland.
- New scientific evidence of the much stronger potency of methane as a greenhouse gas compared to CO₂ and enhanced concern that fuel switching to methane will have no positive climate impact and *could even accelerate climate change*.
- Documentation by the Environmental Defense Fund of ten methane leaks from the VGS pipeline system in Chittenden County.
- VGS' own study, released through Phase II discovery, suggests that the further development opportunities for bio-methane are more limited than VGS had predicted. Gaz Metro's investments in bio-methane since 2012 have resulted in only one injection site in Quebec, and there has been no information from VGS about the outcome or continuation of its 3-month bio-methane injection pilot since it was launched in August.

There are also new developments that have occurred since I submitted my December 23rd motion and January 12th comments that should be taken into consideration in combination with the changes I've already noted. For example, President Obama's January 13, 2015 executive order to impose new regulations on the oil and gas industry aimed at achieving a 50% decrease in methane emissions from

2012 levels by 2025 will most likely increase the associated costs to VGS that will be passed along to customers in rates.

As a completely separate matter from the cost implications of the second VGS Cost Estimate Update, there is something else that the Board should be concerned about, and that's the credibility of the first VGS Cost Estimate Update, the accuracy of the October 7, 2014 Cost Estimate Update Report No. 2014-04 for the reporting period ending October 1, 2014 cost update report, and the credibility of the second VGS Cost Estimate Update. The fact is that the numbers in the second Cost Estimate Update are a mess. There are multiple math errors, and neither the Board nor the parties should have to waste time and resources until VGS can get its act together. But more importantly, it looks to me like VGS didn't just change around its line items beginning in October. VGS made substantial changes to the baseline budget numbers presented in the first VGS Cost Estimate Update that can't be explained away by a couple of new line items, some name changes, and the elimination of "other costs." VGS should have to explain what is going on here – especially because the second Cost Estimate Update makes it seem like construction costs increased by under \$10 million when actually they've increased by more than \$20 million since July 2nd. That fact is masked by VGS having increased the "budget baseline" for construction between July 2nd and October 7th by \$10 million before any variances are considered. The line item costs are bouncing up and down wildly, and this should make the Board question both whether to trust any numbers presented by VGS and whether, even with a new cost estimation team, new executive sponsor, new project management team, and new CEO on the case, the company is capable of managing this Project now or ever.

Each of these new facts or circumstances, when considered separately and independent of one another, will likely change the Board's assessment of whether the project meets the statutory standards set

forth in Section 248. It's true that when considered in light of the \$32 million increase or in combination with one of the other developments it will probably be a no brainer to rescind the CPG. However, the scope of the Board's consideration of whether to reopen the case under Rule 60(b) should cover each piece of new evidence that could have swayed the Board's decision if it had been available in September 2014. Therefore, the new developments and new facts identified in our December 23rd motion for relief from judgment under Rule 60(b)(2) and other parties' motions and their effect on Section 248 criteria should be considered in their own right in addition to consideration in light of VGS' second Estimated Cost Update.

I believe that my December 23rd motion and January 12th comments should be adequate basis for the Board to broaden the scope of the investigation to encompass all post-CPG changes that would have likely negatively affected the Board's decision to issue the CPG had they been known at the time of the September 2014 proceedings in the context of reviewing the project for compliance with Sections 248(a) (3), 248(b)(2), 248(b)(3), 248(b)(4), 248(b)(5) and 248(b)(6). I wholeheartedly support a very rigorous review and "hard look" at the reliability of the second Cost Estimate Update and resulting increase in costs of this project, as well as at VGS' confidence that there won't be any more increases in the future since VGS has only built five or 6 miles of the pipeline but has already expended nearly one third (over \$48 million) of the current estimated project cost.

As a final note on the scope of a 60(b) proceeding, I respectfully request that the Board consider the implications VGS' many construction cost increases will have on the costs of installing a distribution system in Addison County. As I understand from VGS' prior testimony, the cost estimates we've seen do not include the costs of building out distribution for any town in Addison County. VGS' promise to build distribution into Middlebury, Vergennes or any other town in Addison County could end up being just a pipe dream if those estimates are off as much as VGS' previous cost estimates have been. Since everyone

keeps saying that construction prices are going up, it makes sense that later elements of the Project will cost more to build than they're costing right now. I hope that the Board will include this issue in its review because the *supposed benefits to Vermonters from this project depend on the economic feasibility of distribution in Middlebury and Vergennes and the support from those communities was based upon them getting access to gas*. VGS has been assuming all along not only that residents in these locations will want to burn methane but also that VGS will be able to afford to reach those people. Will expansion into Middlebury and Vergennes meet the criteria set forth in VGS' least-cost integrated resource plan (IRP)⁴ if it turns out it will cost a lot more than the \$7 million VGS originally pitched to the Public Service Board?

II. NEED FOR DISCOVERY

Based on the Board's investigation into VGS' July 2, 2014 Updated Capital Cost Estimate (first Cost Estimate Update), I do not believe that I or the parties will have adequate opportunity to gather facts and information about the case from VGS and DPS to assist in preparation for the technical hearing. During the technical hearings in September 2014, VGS was unable to answer relevant questions related to the level of accuracy of the cost estimates, rate impacts, and economic benefits of the project. For example, Mr. Gilbert stated that he did not know whether most contracts for the project were fixed-price, or whether there were performance bonds, caps, and/or escalation terms built into the contracts to minimize risk. Ms. Simollardes could not estimate the rate impact or break-even point of the project for an equivalent period to the period described in the company's earlier filings and declined to do calculations while under oath or during a break in proceedings. The information received at the Board's direction following the technical hearing still did not provide the "apples-to-apples" information or an

⁴According to the Board's Order in Docket 7980, "The VGS IRP states that, when determining whether to extend a main and thus make service available to new customers, VGS applies two financial tests: (1) whether, at 100 percent saturation, the margin generated by the consumption of potential customers over ten years covers the cost of construction at the allowed rate of return of VGS; and (2) the margin generated over the first year, when blended with the financial results achieved by all of the Company's growth projects, must meet or exceed the allowed rate of return. Final Order, Docket 7980, December 9, 2013 at p. 3-4, citing Exh. VGS-1 at 3-3.

update to the presented spreadsheets to explain the impact of the cost increase over the same number of years as was originally presented to the Board in VGS' application and subsequent updated financials. The other parties had no recourse to obtain this information, and the Board's decision was based only on the evidence available to us in the absence of cooperation from VGS.

I have no reason to believe that VGS' witnesses will be any more forthcoming than the company's witnesses were during the last proceeding, in which case I will not be able to obtain facts and information to prepare for the technical hearing. Nor will I be able to obtain equivalent facts and information at the technical hearing, since many of the individuals who prepared or oversaw the preparation of the first Cost Estimate Update no longer work for VGS and VGS admitted at the September 26th technical hearing that it had diminished CHA's scope such that CHA is no longer responsible for cost estimation. Among others, Mr. Gilbert, who submitted prefiled testimony and testified on behalf of VGS, is no longer with the company and VGS did not submit prefiled testimony from him last week. Without discovery, we will have no opportunity to obtain relevant historical facts or information to compare the process and methods used to prepare the first Cost Estimate Update and those used to generate the second Cost Estimate Update. Without this information it is difficult to question or refute VGS' claims that the current budget is more accurate or credible than past cost estimates. I think that fundamental fairness and due process require that the parties have an opportunity to obtain information necessary to support claims and to prepare for technical hearings. I also think that VGS should not be allowed to exhibit spreadsheets that cannot be compared (apples-to-oranges) because they are not actually "updates" of prior filings but rather only partial updates. The Board should also require VGS put witnesses on the stand who can answer reasonable questions to clarify VGS' own prefiled testimony. That way, there is at least some chance of compelling VGS to produce facts and information through the discovery process.

As mentioned in the AARP and Lyons comments on the various motions on the first Cost Estimate Update and above, there appear to be unexplained discrepancies between VGS' September 2014 statements, press reports, and VGS' most recent filings. Once again, the Board and parties have been presented with apples and oranges that cannot be compared easily or accurately without further information that I fear will not be available or accessible during a technical hearing. Perhaps more importantly, with the exception of "VGS Overhead," none of the "Budget Baseline" amounts presented in the "Project Cost Estimate Summary – Phase 1" attached to the January 15th Estimate and Mr. Roam's Petitioner Exhibit RR-2 match with those presented in the first Cost Estimate Update. Unless I am mistaken, these new baseline figures mysteriously appeared in the October "Project Budget Summary," attached to VGS' October 7th Cost Estimate Update Report No. 2014-4, but are not substantiated in any budget report or other information shared with the parties. The variance between these baseline figures and the "current budget" amounts submitted with VGS first Cost Estimate Update on July 2nd are simply gigantic. I don't think that we should all have to sit around scratching our heads about this. Instead, I think that we have a reasonable interest in engaging in discovery to obtain the facts and information necessary to understand why the activity descriptions changed and how the changed and new activities are defined (what cost elements are included in each activity description or line-item in the budget). The same is true for the variances and other inconsistencies in VGS' second Cost Estimate Update such as implied changes to the definition of each line item. For example, Mr. Roam gives an explanation in his prefiled testimony of what is included in "VGS Overhead" and says that it includes "other costs." When I look at how much "other costs" were in the first Cost Estimate Update back in July and then look at the VGS Overhead numbers in their October report and in the second Cost Estimate Update, I have a hard time believing Mr. Roam could possibly be right. But, then I wonder, where did those "project control" and "legal" costs that VGS said had gone up in July go? Just from my own casual observation, I've seen a lot more lawyers involved with VGS lately so I can't imagine that legal fees have all but disappeared from the budget or

that they could be accommodated in “project management” given that those figures decreased since July (and since October too). I’m just saying that in my experience, VGS doesn’t have the right people at the technical hearing to answer these kinds of questions, and then we end up without the facts and information we need to file effective briefs. I think that discovery would help solve this problem.

Finally, I think that the issue of the new availability of trucked CNG requires discovery to determine whether, in light of all the other impacts on customer rates and the latest cost overrun, the Project is still the least-cost alternative to meet actual demand. I think we need discovery to better understand actual customer demand for methane. We know that VGS has done a survey, but they still haven’t released it through discovery in Phase II, and we think that if the parties are going to see it at all we would have to obtain it through discovery. We believe that the real projected impact of the Energy East project, if and when approved in Canada, will have on rates in Vermont, and the implications of the new tolls for storage and transportation of “natural” gas following Gaz Metro’s settlement with TransCanada can only be obtained through discovery.

For all of the above reasons, I respectfully request that the Board provide ample time for discovery without jeopardizing due process or allowing VGS to continue to spend money that it will ultimately have to recoup from ratepayers one way or another. However, if the Board determines not to allow the parties to obtain facts and information through discovery, I request that, at the very least, the Board schedule more time for parties to review VGS’ filings than was possible during the inquiry into the first VGS Cost Estimate Update. We also ask that the Board adjust the schedule if VGS makes any corrections, updates or substantial alterations to its filed Exhibits.

VGS has an out-sourced team of cost estimators in addition to its internal finance and accounting team to provide information and keep the company’s operations on track. The company has also out-

sourced lead counsel and several additional lawyers to represent the company, prepare its filings, motions, comments, and responses in this proceeding. DPS also has a staff to turn around submissions.

Nonetheless, DPS has also seemingly not been able to keep up with the need for rigorous review of VGS' ever-changing estimated cost update formats and content. The nonprofit and *pro se* parties in this matter do not have staff (other than my wife!) and consultants devoted only to this matter and have their own organizations, businesses, and jobs to keep afloat. It is simply not realistic for us to review voluminous and asymmetrical spreadsheets and prepare for technical hearings in 5-10 business days. As we said with respect to the proceedings following VGS' first Cost Estimate Update, if VGS is unable to produce a reasonably accurate budget update for a matter of months or to update Exhibits so that they actually have comparable content to VGS' application Exhibits (even at the Board's direction at the technical hearing), we do not think it is reasonable to expect other parties to read and understand VGS' Exhibits, compare them with VGS' prior testimony and immediately relevant prefiled and/or oral testimony, identify other relevant documents, conduct a comparative analysis, and either prepare for a technical hearing or submit a final brief in a matter of days.

III. SCHEDULE

Much as I hate the thought of going through all of this pile of poo again, I propose a schedule comparable to the schedule under Docket 8328, which provides for prefiled testimony, one round of discovery on VGS, one round of discovery on other parties, and one round of rebuttal testimony for VGS and other parties, and one round of discovery on rebuttal testimony prior to a technical hearing, which I propose to take place a full two weeks after VGS' and other parties' responses to discovery on rebuttal testimony. I propose time frames for prefiled testimony, discovery, and rebuttal testimony comparable to those in Docket 8180. Alternatively, I propose one round of prefiled testimony, one round of discovery, and a technical hearing at least two weeks after parties' submission of discovery responses and with a

duration of no less than two days to provide for adequate opportunity for parties to prepare for the technical hearing and to examine witnesses.

IV. CONCLUSION

I respectfully confirm my request that the Board reopen the case under Rule 60(b) as outlined in my motion of December 23rd, 2014 and comments of January 12, 2015 and specifically request that the Board consider 1) the criteria that may be affected by the second Cost Estimate Update to account for other changes that have occurred since the evidentiary hearings in September 2014; and 2) the other changes that have occurred since the September 2014 hearings in and of themselves, including their independent effect on whether the Project meets the Section 248 criteria. I further request that the Board take into consideration my request for discovery and suggestions regarding the schedule as outlined above.

Signed at Monkton, Vermont on this day of January 21, 2015

A handwritten signature in brown ink that reads "N. Palmer". The signature is fluid and cursive.

Nathan Palmer, *pro se*
Laughing Tree Farm
986 Rotax Road
North Ferrisburgh, VT 05473